

2. Class of Action and 6004 Assignability Determination

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Chapter Abbreviations/Acronyms

ANILCA – Alaska National Interest Land Conservation Act
CE – Categorical Exclusion
CEQ – Council on Environmental Quality
CFR – Code of Federal Regulations
COA – Class of Action
DEIS – Draft Environmental Impact Statement
DOI – Department of Interior
DOT&PF – Alaska Department of Transportation & Public Facilities
EA – Environmental Assessment
EIS – Environmental Impact Statement
ESA – Endangered Species Act

FAA – Federal Aviation Administration
FHWA – Federal Highway Administration
FONSI – Finding of No Significant Impact
FTA – Federal Transit Administration
MOU – Memorandum of Understanding
NEPA – National Environmental Policy Act
NMFS – National Marine Fisheries Service
NOI – Notice of Intent
REM – Regional Environmental Manager
ROD – Record of Decision
USC – United States Code
USFWS – U.S. Fish and Wildlife Service

2.1 Introduction

This chapter provides a description of the classes of action under the National Environmental Policy Act (NEPA), a summary of the process for determining a project's class of action (COA) and 6004 assignability, and the documentation requirements for these activities.

2.2 Class of Action

For every FHWA-funded project, the environmental documentation process typically begins with the 6004 assignment and class of action consultation. The 6004 assignment determination is directly related to the class of action determination and these activities occur concurrently, so the processes are closely related.

Under NEPA regulations there are three environmental classes of action, each having different documentation and compliance requirements. The classes of action are:

- *Environmental Impact Statements* (Class I) [\[23 CFR 771.115\(a\)\]](#) – Actions that significantly affect the environment require an Environmental Impact Statement (EIS). The EIS process includes a Notice of Intent (NOI), Draft EIS (DEIS), Final EIS (FEIS) and a Record of Decision (ROD). Actions that require an EIS are not assignable under the 6004 Program.
- *Categorical Exclusions* (Class II) [\[23 CFR 771.115\(b\)\]](#) –Categorical Exclusions (CE) are actions that do not individually or cumulatively have a significant effect on the quality of the human environment and are excluded from an EIS or an Environmental Assessment (EA). Under the 6004 MOU, the responsibility for certain CE determinations has been assigned to the DOT&PF (see Section 2.3).

The majority of DOT&PF projects are processed as CEs. Actions that typically meet the definition of a CE are identified in two specific lists, commonly referred to as the “c” list [\[23 CFR 771.117\(c\)\]](#) (Table 3-1) and the “d” list [\[23 CFR 771.117\(d\)\]](#) (Table 3-2). Documentation requirements vary depending on the specific types of project activities. See Chapter 3 for more information.

- *Environmental Assessments* (Class III) [\[23 CFR 771.115\(c\)\]](#) – Activities in which the significance of the environmental effects is not clearly known require an EA. An EA determines whether or not the environmental effects are significant and if there will be a need for further analysis and documentation. An EA will provide sufficient evidence and analysis to determine whether to prepare an EIS or a Finding of No Significant Impact (FONSI). Actions that require an EA are not assignable under the 6004 Program.

2.2.1. Class of Action Determination

The COA is determined based upon the types of activities involved with the project and an assessment of the probable impacts of the project's action. To determine the type of environmental documentation required for a proposed activity, you must fully understand the potential for significant impacts and whether unusual circumstances exist.

Research conducted in support of a class of action determination aids in assessing the appropriate level of environmental documentation. It also assists in establishing accurate time estimates for completing the environmental process. This helps establish reasonable expectations for project funding and planning.

Once adequate information about the project is known, the REM recommends a COA to the appropriate Statewide NEPA Manager using a Class of Action Consultation Form (more detail on this Form in Section 2.4). The completed form is then sent to the Statewide NEPA Manager for concurrence.

Significant Impacts

A project that results in significant impacts to the human environment will not meet the requirements of a CE [\(23 CFR 771.117\[a\]\)](#). Guidance is provided in the Council on Environmental Quality (CEQ) regulations to help better understand the concept of “significance” in relation to the evaluation of impacts. In determining “significance,” CEQ regulations [\(40 CFR 1508.27\)](#) require that two main points be considered: context and intensity.

Impacts should be considered in the context of society as a whole, the affected region, and the locality. Both short and long term effects are relevant, as well as indirect and cumulative impacts.

Factors to consider regarding intensity or severity of impacts include:

- Impacts that may be both beneficial and adverse
- The degree to which the proposed action affects public health or safety
- Unique characteristics of the geographical area
- The degree to which the effects on the quality of the human environment are likely to be highly controversial
- The degree to which the possible effect on the human environment are highly uncertain or involve unique or unknown risks
- The degree to which the action may establish a precedent for future actions with significant effects
- Whether the action is related to other actions with individually insignificant but cumulatively significant impacts
- The degree to which the action may adversely affect resources listed in or eligible for listing in the National Register of Historic Places or may cause loss or destruction of significant scientific, cultural, or historical resources
- The degree to which the action may adversely affect an endangered or threatened species or its habitat

- Whether the action threatens a violation of federal, state, or local law or requirements imposed for the protection of the environment

Keep these factors in mind when assessing if an action may have significant impacts. In many cases the determination of significance will be obvious because of the absence of an impact to resources present. In other cases, the degree to which the project may affect a resource will need to be considered. For 6004 projects, consult with regional and statewide environmental staff and appropriate resource agencies when determining resource impacts.

To properly assess the potential for significant impacts, some level of research will be necessary. This could include referring to technical reports, consulting with project planners and engineers, visiting the project area, and using resources such as Google Earth, the National Wetlands Inventory, U.S. Fish and Wildlife Service (USFWS) threatened and endangered species resources or the Alaska Heritage Resource Survey.

Unusual Circumstances

If an action involves unusual circumstances it will not meet the requirements of a CE ([23 CFR 771.117\[b\]](#)). Any action which normally would be classified as a CE, but has the potential to involve unusual circumstances, will require the appropriate environmental studies to determine if the CE classification is proper.

If an action involves any of these unusual circumstances, the project does not qualify as a CE:

- Significant environmental impacts;
- Substantial controversy on environmental grounds;
- Significant impacts on properties protected by [Section 4\(f\) of the DOT Act of 1966](#) or [Section 106 of the National Historic Preservation Act](#); or
- Inconsistencies with any federal, state or local law, requirement, or administrative determination relating to the environmental aspects of the action.

2.3 6004 Assignment

If sufficient information is known during consultation on the COA it is recommended that the REM also evaluate the project to determine if it shall be assigned to the 6004 program. After an evaluation the REM will then forward an assignment recommendation to the Statewide NEPA Program Manager. The COA and determination of 6004 assignment can be simultaneously completed to expedite review using the Class of Action Consultation Form.

2.3.1 6004 CE Assignment MOU

The 6004 MOU describes the specific responsibilities assigned to the State and those retained by FHWA. Appendix B of the 6004 MOU provides a list of the environmental responsibilities assigned to the State. A copy of the [6004 MOU](#) is available on the DOT&PF Environmental website and further background information on the 6004 Program is described in section 1.1.2 of Chapter 1.

Responsibilities assigned to the State under the 6004 MOU pertain to the following types of activities:

- actions listed in [23 CFR 771.117\(c\)](#) (“c” list), and
- example actions listed in [23 CFR 771.117\(d\)](#) (“d” list).

2.3.2. Exclusion of Projects from 6004 Assignment

Projects not assigned to the 6004 program are processed by FHWA. The *Alaska Environmental Procedures Manual* addresses the methods to process these projects.

Projects that are expected to require an EA or an EIS are not eligible for 6004 assignment.

If a project is on the “c” or “d” list but involves any of the following circumstances it will be excluded from 6004 assignment:

- The action has Federal funding sources in addition to Federal-Aid Highway Funding (e.g., FTA, Denali Commission, FAA).
- The Department of Interior determines that the project will require use of Alaska National Interest Lands Conservation Act ([ANILCA](#)) designated lands where such use would require a Title XI approval. FHWA has reserved the responsibility for formal consultation with the Department of Interior (DOI) for actions that require the use of [ANILCA](#) designated land.
- DOT&PF has determined that an Individual [Section 4\(f\)](#) Evaluation will be required. FHWA has reserved the responsibility for review and approval of projects that require Individual Section 4(f) Evaluations.
- A project-related concern or issue is raised in a government-to-government consultation process with an Indian tribe, as defined in [36 CFR 800.16\(m\)](#), and either the Indian tribe or the FHWA determines that the issue or concern will not be satisfactorily resolved by DOT&PF.
- DOT&PF, USFWS, or the National Marine Fisheries Service (NMFS), determines that the action is likely to adversely affect a listed endangered or threatened species or their critical habitat, such that Formal Consultation under Section 7 of the [Endangered Species Act](#) (ESA) is required.

When a previously assigned CE is subsequently determined to be excluded from assignment, the Statewide NEPA Manager will notify the FHWA Environmental Program Manager, the FHWA Area Engineer, and the REM. From that point forward, the REM will coordinate all environmental processing with FHWA.

Government-to-Government Consultations

For 6004 assigned projects, FHWA retains responsibility for conducting formal government-to-government consultations with federally recognized Indian tribes as defined by [36 CFR 800.16\(m\)](#). Formal government-to-government consultation occurs when it is initiated by the FHWA, or is requested by the Indian tribe.

DOT&PF will continue to handle routine communications with a tribe. DOT&PF may also assist FHWA with formal consultations, with the consent of an Indian tribe. But FHWA is responsible for ensuring that this consultation occurs. If it is determined that there is an issue or concern that will not be satisfactorily resolved by the State, then the project will be excluded from 6004 assignment and will need to be processed by FHWA.

If a formal government-to-government consultation is initiated on a 6004 project, the REM will transfer to FHWA all project information and materials necessary to complete their government-to-government consultation.

DOT&PF notices sent to an Indian tribe advising of a proposed project, such as a project scoping notice, is not considered “government-to-government” consultation under the 6004 MOU and does not need FHWA involvement or notification by DOT&PF.

Formal Consultations under Section 7 of the Endangered Species Act

For 6004 projects, FHWA retains responsibility for Formal Consultation under Section 7 of the ESA. DOT&PF will continue to handle all other responsibilities under Section 7 of the ESA including preparation of biological evaluations and assessments, informal consultation and Conferences.

If during the Formal Consultation process it is determined that the proposed action is likely to adversely affect a listed endangered or threatened species or their critical habitat the project will be excluded from 6004 assignment and will need to be processed by FHWA.

2.4 Class of Action Process

A [Class of Action Consultation Form](#) (COA Form) is completed for every FHWA project. This form serves the following purposes:

- It provides decision makers with sufficient information to make a class of action determination
- It documents the action category for the project (e.g., c[1], d[1], d[3], etc.)
- It documents whether or not the project is eligible for 6004 assignment

The following information should be included on the COA Form:

- | | |
|--|--|
| • project name | • funding source(s) (e.g., FHWA, Denali Commission, Federal Aviation Administration, Federal Transit Administration, Bureau of Indian Affairs, Department of Interior) |
| • state and federal project numbers (if available) | |
| • project description | |
| • CE action category (“c” or “d” list actions) | • any unusual circumstances or public controversy |
| • scope | |
| • probable environmental impacts of the action | • maps and drawings of the project area and activities |

The REM submits the COA Form to the Statewide NEPA Manager.

6004 Assigned Projects

The Statewide NEPA Manager will send written notification to the REM that verifies the probable CE designation and that the project is 6004 assignable. The Statewide NEPA Manager will sign the COA Form and return a copy to the REM via email. The email and signed form become part of the project file. All subsequent environmental documents for the project are submitted to the Statewide NEPA Manager.

For 6004 assigned projects, no project-specific consultation related to the environmental process should be conducted with FHWA. The project will be processed using this *Alaska 6004 Program Environmental Procedures Manual*.

Non-assigned Projects

The Statewide NEPA Manager will send written notification to the REM, the FHWA Environmental Program Manager, and the FHWA Area Engineer that the project is not assignable and all further environmental document processing should be routed to the FHWA. The project will be processed using the *Alaska Highway Environmental Procedures Manual*.

2.5 Projects Started Prior to the Original 6004 MOU

If the environmental process for a project began prior to the original 6004 MOU, signed on September 22, 2009, it should be evaluated for possible inclusion in the 6004 Program. The REM will consult with the Statewide NEPA Manager to determine whether the project is assignable using the process in section 2.4. This will ensure that all active projects are evaluated for 6004 assignment.

2.6 Additional Resources

[6004 MOU between FHWA and DOT&PF](#)

Complete text of the 2012 6004 MOU

[Class of Action Consultation Form](#)

The current version of the COA Form is available on the DOT&PF Statewide Environmental website

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